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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,343

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Greg Volgas

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/784,343
Filing Date: February 23, 2004
Appellant(s): VOLGAS ET AL.

Ashley I. Pezzner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/3/10 appealing from the Office action
mailed 8/18/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 91 and 94-104 are pending and rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

The Agrochemical Handbook, 3rd Edition, The Royal Society of Chemistry, 1991
(A0111/Aug 91)

Surfactants and Other Additives in Agricultural Formulations (textbook), Reports Group, Hewin International John Wiley & Sons, Inc., 1998, pp. 5,20-25.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 91,94-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Agrochemical Handbook, 3rd Edition, The Royal Society of Chemistry, 1991 (A0111/Aug 91 or A0133/Aug 91) and Surfactants and Other Additives In Agricultural Formulations (textbook), Reports Group, Hewin International John Wiley & Sons, Inc., 1998, pp. 5,20-25. The Agrochemical Handbook teaches the herbicidal acid form of 2,4-

Art Unit: 1616

D and dicamba. The Agrochemical Handbook does not teach or suggest the addition of a surfactant to either acid herbicide. However, the textbook discloses that surfactants are essential components of herbicide products, aiding in the dilution and shelf life of the herbicide. The textbook teaches that the use of nonionic surfactants such as alkylphenol ethoxylates, long chain alkanol ethoxylates and ethylene oxide/propylene oxide block copolymers (p. 20) is common in pesticide and herbicide formulations (p.7). The textbook teaches that in the pesticide and herbicide formulations such surfactants when combined with herbicide or pesticide produce an emulsion (p. 20). These surfactants are recited in the instant claims. It would have been obvious to add said surfactant or surfactants to 2,4-D or dicamba in acid form. One would have been motivated to do this in order to enhance the shelf life and to aid the dilution of the herbicide. This combination of references would result in an invention consisting of the claimed herbicide and claimed surfactant only, making the combination to read on the instant claim directed to "consisting of". It is well known that a herbicide composition is to be use in a method comprising applying the composition to crops/plants in order to control weed growth. With respect to amounts and ratio of ingredients, it would have been obvious for an artisan in the field to have determined the optimum amounts/ratios of ingredients. One would have been motivated to do this in order to make an invention that would have been most effective at controlling weeds without destroying the plants/crops.

(10) Response to Argument

Art Unit: 1616

Appellants argue that the prior art does not make obvious an invention wherein 2,4-D or dicamba in acid form are combined with surfactant and water to yield a microemulsion as claimed. Applicants argue that the prior art, including the prior art cited in the rejection now standing, uses 2,4-D and dicamba in salt form rather than in acid form to produce formulation. Appellants argue that The Agricultural Handbook (handbook) teaches using 2,4-D and dicamba in the salt form rather than in the acid form. Appellants also argue that the Surfactants and Other Additives In Agricultural Formulations textbook does not appear to state that surfactants are mixed with acid herbicides. The Examiner argues that the Handbook teaches 2,4-D and dicamba herbicides in acid form. This teaching suggests that both herbicides can be utilized in the acid form. While it is true that the textbook does not explicitly teach that acid herbicides are mixed with surfactants, the textbook discloses that surfactants are essential components of herbicide products, aiding in the dilution and shelf life of the herbicide. It would have been obvious to add surfactant or surfactants to 2,4-D or dicamba in acid form. One would have been motivated to do this in order to enhance the shelf life and to aid the dilution of the herbicide. This combination of references would result in an invention consisting of the claimed herbicide and claimed surfactant only, making the combination to read on the instant claim directed to "consisting of". Thus, the rejection is neither based on hindsight nor selective picking and choosing, but rather on objective reasoning as explained above at the start of the argument.

Appellants argue previously withdrawn rejections which included Policello, AF-300 and Weedone as prior art. The Examiner has already withdrawn the rejections

Art Unit: 1616

including Policello, AF-300 and Weedone as prior art, and therefore, the only rejection that is argued in this Examiner's Answer is the rejection now standing.

Appellants point to Dr. Tsuji's Formulation Science book, Purdue University's publication of Pesticides and Formulation Technology and Rhodia's Auxiliaries for agrochemical formulations to support that none of the three citations teach or suggest increasing the surfactant to the point of fully dissolving the acid herbicide. The Examiner argues that neither claim 91 nor claim 104 recite that the surfactant is present in an amount to fully dissolve the acid herbicide as argued. Hence, a limitation argued, but not claimed in claims 91 and 104 has no patentable weight.

The Examiner acknowledges Appellants' interest in provoking an interference with Herold (USPN 6,803,345). The interference will be arranged once instant claims as they stand have been declared allowable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alton N. Pryor/

Primary Examiner, Art Unit 1616

Conferees:

/Johann R. Richter/

Application/Control Number: 10/784,343

Page 7

Art Unit: 1616

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